



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 30663088

Date: JUN. 26, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an artist, seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand this matter for the entry of a new decision consistent with the following analysis.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is an artist whose work has been featured in several exhibitions in New York. She studied illustration at the [REDACTED] and painting at the [REDACTED]. [REDACTED] The Petitioner intends to continue her work as an artist in the United States.

As a preliminary matter, we acknowledge that the Petitioner has been the Beneficiary of an approved O-1B petition. Although USCIS has approved at least one O-1B nonimmigrant visa petition filed on behalf of the Petitioner, this prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. The nonimmigrant and immigrant categories have different criteria, definitions and standards for persons working in the arts. “Extraordinary ability in the field of arts” in the nonimmigrant O-1B category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, “extraordinary ability” reflects that the individual is among the small percentage at the very top of the field. 8 C.F.R. § 204.5(h)(2).

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director determined that the Petitioner met two of the criteria she claimed to have satisfied: participation as a judge of the work of others in her field and the display of her work at artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (vii). The record supports that determination. However, the Director concluded the Petitioner did not establish that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (viii), or (ix). On appeal, the Petitioner asserts that she meets these criteria, and she contends that the Director incorrectly evaluated supporting evidence. Upon review, we conclude that the Petitioner has met the criteria at 8 C.F.R. § 204.5(h)(3)(iii).

Published material about the individual in professional or major trade publications or other major media, relating to the individual’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner submitted articles from websites showing that she was interviewed and that her work has been discussed in several publications, including *Art in America*, *Artforum*, *Cultured*, *Hyperallergic*, *Brooklyn Rail*, and *Canadian Art*. In denying the petition, the Director characterized these articles as originating from “web portals” that are “not subject to editorial review” and “open to

self-creation material,” therefore having “no evidentiary weight.” The record includes documentation concerning circulation, revenues, and distribution data. However, the record also includes credible letters from museum curators and senior members of artist residency programs discussing the prominence of the publications in which the Petitioner was published in the field of visual arts. We conclude that the record includes sufficient evidence demonstrating that the publications in which the Petitioner was published are, more likely than not, widely known in the arts community and target a professional audience. As such, we consider them to be professional publications.

As to material that has been published about the Petitioner in other major media, the Petitioner submitted an article from *Time Out*, a widely known international magazine that specializes in highlighting events in cities throughout the world. The article featured the Petitioner’s work in its 2017 article, [REDACTED]. The Petitioner also submitted articles from *The New York Times* discussing her artwork and the work of other contemporary artists, including [REDACTED] [REDACTED] which highlights the Petitioner as one of six within a group show, and [REDACTED] which features “noteworthy gallery shows.” The Petitioner further submitted a piece from the *New York Times* titled, [REDACTED] [REDACTED]. The piece depicts hand-drawn artwork from these artists created during the first weeks of the global pandemic and includes accompanying quotes from the artists. The Director determined that the article was not “specifically published material about” the Petitioner. We disagree with this determination. The submitted evidence reflects that the Petitioner was one of a few artists featured in a major publication in a populous city known for its abundance of artists, and these individuals were singled out to express their experience through their art and personal opinions during a prominent international event. The article was about the viewpoints of several artists, including that of the Petitioner. The evidence of record meets the plain language of this criterion.

III. CONCLUSION

The Petitioner has met the requisite three of ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(iii), (iv), and (vii). We therefore need not consider whether she met additional claimed criteria at 8 C.F.R. § 204.5(h)(3)(i), (v), (viii), or (ix).

We will withdraw the Director’s denial of the petition and remand the matter for further review and entry of a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we express no opinion regarding the ultimate resolution of this matter on remand. On remand, the Director should conduct a final merits review of the evidence of record. The new decision should include an analysis of the totality of the evidence evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim, her status as one of the small percentage at the very top of her field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.